

ARTICLE 4. SPECIAL EDUCATION

R7-2-401. Special Education Standards for Public Agencies Providing Educational Services

A. For the purposes of this Article, the Individuals with Disabilities Education Improvement Act Amendments of 1997 (IDEA); (20 USC 1400 et seq.), ~~as reauthorized on June 4, 1997, and the IDEA 1997 and its implementing regulations;~~ (34 CFR 300.4 ~~300.1 et seq.~~) ~~through 300.756 effective March 1999,~~ are incorporated herein by reference. Copies of the incorporated material can be obtained from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 37195-7954, Pittsburgh, PA 15250 or the Arizona Department of Education, Exceptional Student Services, 1535 West Jefferson, Phoenix, Arizona 85007. This Article does not include any later amendments or additions to IDEA or IDEA regulations.

B. Definitions. All terms defined in the regulations for the Individuals with Disabilities Education Improvement Act (IDEA) ~~1997 Amendments (34 CFR 300.4 through 300.30, and 300.504)~~ and A.R.S. § 15-761 are applicable, with the following additions:

1. "Accommodations" means the provisions made to allow a student to access and demonstrate learning. Accommodations do not substantially change the instructional level, the content or the performance criteria, but are made in order to provide a student equal access to learning and equal opportunity to demonstrate what is known. Accommodations shall not alter the content of the curriculum or a test, or provide inappropriate assistance to the student within the context of the test.
2. "Adaptations" means changes made to the environment, curriculum, and instruction or assessment practices in order for a student to be a successful learner. Adaptations include accommodations and modifications. Adaptations are based on an individual student's strengths and needs.
3. "Administrator" means the chief administrative official or designee (responsible for special education services) of a public education agency.
4. "Audiologist" means a person who specializes in the identification and prevention of hearing problems and in the non-medical rehabilitation of those who have hearing impairments and who is licensed to practice audiology according to A.R.S. Title 36, Chapter 17, Article 4.
5. "Boundaries of responsibility" means for:
 - a. A school district, the geographical area within the legally designated boundaries.
 - b. A public agency other than a school district, the population of students enrolled in a charter school or receiving educational services from a public agency.
6. "Certified school psychologist" means a person holding a certificate from the Arizona State Board of Education issued pursuant to 7 A.A.C. 2, Article 6, in the area of school psychology.
7. "Certified speech/language therapist" means a person holding a certificate from the Arizona State Board of Education issued pursuant to 7 A.A.C. 2, Article 6, and a license from the Arizona Department of Health Services as a speech/language pathologist in accordance with A.R.S. Title 36, Chapter 17, Article 4.
8. "Department" means the Arizona Department of Education.
9. "Doctor of medicine" means a person holding a license to practice medicine pursuant to Chapter 13 (medical doctor) or Chapter 17 (doctor of osteopathy) of Title 32, Arizona Revised Statutes.
10. "Exceptional Student Services Division" or "ESS" means the Exceptional Student Services Division of the Arizona Department of Education.
11. "Evaluator" means a qualified person in a field relevant to the child's disability who administers specific and individualized assessment for the purpose of special education evaluation and placement.
12. "Full and individual evaluation" means procedures used in accordance with the IDEA to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. This evaluation includes:
 - a. A review of existing information about the child; and
 - b. A decision regarding the need for additional information; and
 - c. If necessary, the collection of additional information; and
 - d. A review of all information about the child and a determination of eligibility for special education services and needs of the child.
13. "Independent educational evaluation" means an evaluation conducted by a qualified evaluator who is not employed by the public education agency responsible for the education of the child in question.
14. "Interpreter" means a person trained to translate orally or in sign language in matters pertaining to special education identification, evaluation, placement, the provision of FAPE, or assurance of procedural safeguards for parents and students who converse in a language other than spoken English. Each student's IEP team determines the level of interpreter skill necessary for the provision of FAPE.
15. "Language in which the student is proficient" means all languages including sign language systems.
16. "Licensed psychologist" means a person holding a license from the state of Arizona Board of Psychologist examiners in accordance with A.R.S. Title 32, Chapter 19.1, Article 2.

17. "Modifications" means substantial changes in what a student is expected to learn and to demonstrate. Changes may be made in the instructional level, the content or the performance criteria. Such changes are made to provide a student with meaningful and productive learning experiences, environments, and assessments based on individual needs and abilities.
18. "Paraeducator" means a person employed to assist with the education of students but who is not certified to teach by the Arizona Department of Education. Alternate terms may include paraprofessional, teacher aide, instructional assistant or other similar titles.
19. "Private school" means any nonpublic educational institution where academic instruction is provided, including nonsectarian and parochial schools, that are not under the jurisdiction of the state or a public education agency.
20. "Private special education school" means a private school that is established to serve primarily students with disabilities. The school may also serve students without disabilities.
21. "Psychiatrist" means a doctor of medicine who specializes in the study, diagnosis, treatment and prevention of mental disorders.
22. "Public education agency" or "PEA" means a school district, charter school, accommodation school, state supported institution, or other political subdivision of the state that is responsible for providing education to children with disabilities.
23. "Screening" means an informal or formal process of determining the status of a child with respect to appropriate developmental and academic norms. Screening may include observations, family interviews, review of medical, developmental, or education records, or the administration of specific instruments identified by the test publisher as appropriate for use as screening tools.
24. "Special education teacher" means a teacher holding a special education certificate from the Arizona Department of Education.
25. "Suspension" means a disciplinary removal from a child's current placement that results in a failure to provide services to the extent necessary to enable the child to progress appropriately in the general curriculum and advance toward achieving the goals set out in the child's IEP. The term does not include disciplinary actions or changes in placement through the IEP process if the child continues to receive the services described above. The term does include actions such as "in-school" and "going home for the rest of the day" removals if the child does not receive the services described above.

C. Public Awareness.

1. Each public education agency shall inform the general public and all parents, within the public education agency's boundaries of responsibility, of the availability of special education services for students aged three through 21 years and how to access those services. This includes information regarding early intervention services for children aged birth through 2 years.
2. Each public education agency is responsible for public awareness within their enrolled population (including the families of enrolled students).
3. School districts are responsible for public awareness in private schools located within their geographical boundaries.

D. Child Identification and Referral.

1. Each public education agency shall establish, implement, and disseminate to its school-based personnel and all parents, within the public education agency boundaries of responsibility, written procedures for the identification and referral of all children with disabilities, aged birth through 21, including children with disabilities attending private schools and home schools, regardless of the severity of their disability.
2. Each public education agency will require all school-based staff to review the written procedures related to child identification and referral on an annual basis. The public education agency shall maintain documentation of staff review.
3. Procedures for child identification and referral shall meet the requirements of the IDEA and regulations, Title 15, Chapter 7, Article 4 and these rules.
4. The public education agency responsible for child identification activities is the school district in which the parents reside unless:
 - a. The student is enrolled in a charter school or public education agency that is not a school district. In that event, the charter school or public education agency is responsible for child identification activities;
 - b. The student is enrolled in a nonprofit private school. In that event, the school district within whose boundaries the private school is located is responsible for child identification activities.
5. Identification (screening for possible disabilities) shall be completed within 45 calendar days after:
 - a. Entry of each preschool or kindergarten student and any student enrolling without appropriate records of screening, evaluation, and progress in school; or
 - b. Notification to the public education agency by parents of concerns regarding developmental or educational progress by their child aged 3 years through 21 years.
6. Screening procedures shall include vision and hearing status and consideration of the following areas: cognitive or academic, communication, motor, social or behavioral, and adaptive development. Screening does not include detailed individualized comprehensive evaluation procedures.

7. For a student transferring into a school; the public education agency shall review enrollment data and educational performance in the prior school. If there is a history of special education for a student not currently eligible for special education, or poor progress, the name of the student shall be submitted to the administrator for consideration of the need for a referral for a full and individual evaluation or other services.
8. If a concern about a student is identified through screening procedures or through review of records, the public education agency shall notify the parents of the student of the concern within 10 school days and inform them of the public education agency procedures to follow-up on the student's needs.
9. Each public education agency shall maintain documentation of the identification procedures utilized, the dates of entry into school or notification by parents made pursuant to subsection (D)(5), and the dates of screening. The results shall be maintained in the student's permanent records in a location designated by the administrator. In the case of a student not enrolled, the results shall be maintained in a location designated by the administrator.
10. If the identification process indicates a possible disability, the name of the student shall be submitted to the administrator for consideration of the need for a referral for a full and individual evaluation or other services. A parent or a student may request an evaluation of the student. For parentally-placed private school students the school district within whose boundaries the nonprofit private school is located is responsible for such evaluation. ~~If the parent of an identified student enrolled in a private school does not reside within the school district boundaries, the parent, with the assistance of the school district, shall notify the district in which the parents reside of the needs of the student and the residence school district will assume responsibility for follow-up.~~
11. If, after consultation with the parent, the responsible public education agency determines that a full and individual evaluation is not warranted, the public education agency shall provide prior written notice and procedural safeguards notice to the parent in a timely manner.

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I. Confidentiality.

1. Each public education agency shall establish, implement, and disseminate to its personnel, and make available to parents, written policies and procedures to ensure the confidentiality of records and information in accordance with the IDEA, the Family Educational Rights and Privacy Act (FERPA) and regulations, and state statutes.
2. Parents shall be fully informed about the requirements of the IDEA and regulations 300.127, including an annual notice of the policies and procedures that the PEA must follow regarding storage, disclosure to a third party, retention, and destruction of personally identifiable information.
3. Upon receiving a written request, each public education agency shall forward special education records to any other public education agency in which a student is attempting to enroll. Records shall be forwarded within the time-frame specified in A.R.S. § 15-828(F). The public education agency shall also forward records to any other person or agency for which the parents have given signed consent.
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R7-2-402. Standards for Approval of Special Education Programs in Private Schools

- A. Definitions. . All terms defined in the regulations for the Individuals with Disabilities Education Improvement Act (IDEA) ~~1997 Amendments (34 CFR 300.4 through 300.30, and 300.504)~~, A.R.S. § 15-761, and State Board of Education rule R7-2-401 are applicable.

R7-2-405. Due Process Standards Relating to Special Education

A. Definitions. The following definitions are applicable to this rule:

1. A "due process hearing" means a fair and impartial administrative hearing conducted by the State Education Agency by an impartial hearing officer through the Arizona Office of Administrative Hearings.
2. "Impartial hearing officer" or "hearing officer" means an Administrative Law Judge ("ALJ") of the Arizona Office of Administrative Hearings ("OAH") and who is knowledgeable in the laws governing special education and administrative hearings.
3. "Public agency" (PEA") has the same definition as provided in R7-2-401.
4. "State Education Agency" ("SEA") means the Department of Education, Exceptional Student Services Division.

B. The due process procedures specified in this rule apply to all public education agencies dealing with the identification, evaluation, educational placement, or the provision of a free appropriate public education ("FAPE") for children with disabilities.

C. The SEA shall establish procedures concerning:

1. Impartial due process hearings; and
2. Confidentiality and access to student records.

D. An impartial hearing officer shall be:

1. Unbiased - not prejudiced for or against any party in the hearing;
2. Disinterested - not having any personal or professional interest that would conflict with objectivity in the hearing;
3. Independent - may not be an officer, employee, or agent of a public agency involved in the education or care of the child or the SEA. A person who otherwise qualifies to conduct a hearing is not an employee of the public agency or the SEA solely because the person is paid by the public agency to serve as a hearing officer;
4. Trained ~~and evaluated~~ by the SEA as to the state and federal laws pertaining to the identification, evaluation, placement of, and the provision of FAPE for children with disabilities.

E. Hearing officer qualifications and training.

1. All hearing officers shall participate in all required training ~~and evaluation~~ conducted by the SEA as to the state and federal laws pertaining to the identification, evaluation, educational placement, and the provision of FAPE for children with disabilities.
2. A hearing officer shall meet the requirements set forth by OAH regarding ALJs. A hearing officer shall not have represented a parent in a special education matter during the preceding 12 months, and shall not have represented a school district in any matter during the preceding 12 months.

F. Selection of hearing officers.

1. The SEA shall prepare and maintain a list of individuals who meet the qualifications specified in subsection (E) to serve as hearing officers. This list shall also include the qualifications of each hearing officer.
2. A hearing officer shall be assigned in accordance with the procedures of the Office of Administrative Hearings.

G. Request for Due Process Hearing

1. The due process complaint must allege a violation that occurred not more than two years before the date the parent or public education agency knew or should have known about the alleged action that forms the basis of the due process complaint.

~~42.~~ A parent shall submit a written request for a due process hearing to the public education agency and the SEA. The SEA shall provide a model form that a parent may use in requesting a due process hearing. Upon receipt of a written request, there shall be no change in the educational placement of the child except under the applicable provisions of IDEA, unless the PEA and parents agree. If a parent requests a due process hearing, the public education agency shall advise the parents of any free or low-cost legal services available, and provide a copy of the procedural safeguards notice. All correspondence to the parent shall be provided in English and the primary language of the home. If the written request involves an application for initial admission, the child, with the consent of the parent, shall be placed in ~~a program for which the child is eligible~~ the public school until the completion of all proceedings.

2. If the public education agency requests a due process hearing, such request ~~shall~~ may be made on a model form, as noted in Subsection (G)(1), and a copy shall be provided to the parent and the SEA. Upon receipt of a written request, there shall be no change in the educational placement of the child except under the applicable provisions of IDEA, unless the PEA and the parents agree. In conjunction with its request for due process hearing, the public education agency shall advise the parents of any free or low-cost legal services available and provide a copy of the procedural safeguards notice. All correspondence to the parent, including the due process request, shall be provided in English and the primary language of the home. If the written request involves an application for initial admission, the child, with the consent of the parent, shall be placed in ~~a program for which the child is eligible~~ the public school until the completion of all proceedings.
- H. An impartial due process hearing shall be conducted in accordance with the following procedures:
1. The hearing officer shall hold a pre-hearing conference, either telephonically or at a location that is reasonably convenient to the parents and the child involved, to determine if the complaint is a legitimate due process complaint, to ensure that all matters are clearly defined, to establish the proceedings that will be used for the hearing, to determine who will represent and/or advise each party, and to set the time and dates for the hearing.
 2. The hearing officer shall conduct the hearing at a location that is reasonably convenient to the parents and the child involved.

3. The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner, and shall ensure that all parties involved have an opportunity to:
 - a. Present their evidence and confront, cross-examine, and compel the attendance of witnesses;
 - b. Object to the introduction of any evidence at the hearing that has not been disclosed to all parties at least five business days before the hearing;
 - c. Produce outside expert witnesses;
 - d. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.
 4. The parent involved in the hearing shall be given the right to:
 - a. Have the child who is the subject of the hearing present;
 - b. Have the hearing conducted in public;
 - c. Have an interpreter provided by the public agency; and
 5. The hearing officer shall review all relevant facts concerning the identification, evaluation, the educational placement, and the provision of FAPE. This shall include any Independent Education Evaluation secured by the parent.
 - a. The hearing officer shall determine whether the public agency has met all requirements of federal and state law, rules, and regulations.
 - b. The hearing officer shall render findings of fact and a decision, which shall be binding on all parties unless appealed pursuant to this rule.
 6. The hearing officer's findings of fact and decision shall be in writing and shall be provided to the parent, the public education agency, the SEA, and their respective representatives. The parent may choose to receive an electronic verbatim record of the hearing and electronic findings of fact and decision relative to the hearing in addition to the written findings of fact and decision. The hearing officer's findings of fact and decision shall be delivered by certified mail or by hand within 45 calendar days after notification to the hearing officer that the parties have been unable to resolve the matter in accordance with 20 U.S.C. § 1415(f)(1)(B). A hearing officer may grant specific extensions of time beyond the 45 calendar days for good cause shown at the request of either party.
 7. The findings of fact and decision of the hearing officer shall be final at the administrative level. The notification of the findings of fact and decision shall contain notice to the parties that they have a right to judicial review.
 8. Any party to the proceeding has the right to appeal a final administrative decision to a court of competent jurisdiction within 35 calendar days after receipt of the decision.
 9. The SEA, after deleting any personally identifiable information, shall make such written findings of fact and decision available to the public.
- I. Expedited hearing.
1. An expedited hearing regarding disciplinary matters may be requested in accordance with federal law as set forth in 20 U.S.C. § 1415(k).
 2. Hearing officers for an expedited hearing shall be assigned by the Office of Administrative Hearings.
 3. The expedited hearing shall be conducted within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.